(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Criminal Appeal No. 1578 /96.

APPELLANT: (IN JAIL) Surendra Tiwari aged about 30 years son of Agast Tiwari, Assistant Manager, Punam Lodge, R/o Takiya Road, Ambikapur, District Sarguja M.P.

-Versus-

Respondent State of Madhya Pradesh

CRIMINAL APPEAL U/S 374(2) Cr.P.C.

993

H.F.R. (27)

1/3/06

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

Criminal Appeal No.1578 of 1996

Surendra Tiwari

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.1694 of 1996

Baliram Singh and another

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.1736 of 1996

Surendra Singh and another

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.1738 of 1996

Raviranjan Kumar Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.1884 of 1996

Mohan Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

AND

Criminal Appeal No.2347 of 1996

Raj Kumar alias Shivji Singh and others

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
1-3-2006

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 2ND MARCH, 2006

Sd/-
L.C. Bhadoo
Judge

(58)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.1578 of 1996

Surendra Tiwari

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.1694 of 1996

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Surendra Singh and another

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State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.1738 of 1996

Raviranjan Kumar Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.1884 of 1996

Mohan Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

AND

Criminal Appeal No.2347 of 1996

Raj Kumar alias Shivji Singh and others

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. V.K. Pandey, Advocate:	For the appellant in Cr.A.No.1578/1996.
Mr. Surendra Singh, Senior Advocate with Mr. Neeraj Mehta, Advocate:	For the appellants in Cr.A.Nos. 1694/1996 and 2347/1996.

Mrs. Savita Tiwari, Advocate:	For the appellants in Cr.A.No.1736/1996.
Mr. Vishnu Koshta, Advocate:	For the appellant in Cr.A.No.1738/1996.
Mr. M.D. Dhote, Advocate:	For the appellant in Cr.A.No.1884/1996.
Mr. U.N.S. Deo, Addl. Public Prosecutor with Mr. Ravindra Agrawal, Panel Lawyer:	For the State/respondent.
Mr. Yashwant Tiwari, Advocate with Mr. Amiyakant Tiwari, Advocate:	For Bank of Baroda, Ambikapur.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR. DHIRENDRA MISHRA, JJ.

JUDGMENT

(Delivered on 2nd March, 2006)

The following judgment of the Court was delivered by *L.C. Bhadoo, J*: -

1. Criminal Appeal No.1578/1996 filed by Surendra Tiwari; Criminal Appeal No.1694/1996 filed by Baliram Singh & Sanjay Kumar Singh; Criminal Appeal No.1736/1996 filed by Surendra Singh & Devmuni Bai; Criminal Appeal No.1738/1996 filed by Raviranjan Kumar Singh; Criminal Appeal No.1884/1996 filed by Mohan Singh and Criminal Appeal No.2347/1996 filed by Raj Kumar alias Shivji Singh, Gouri Shankar Singh, Devendra Kumar Singh & Arvind Singh are being disposed of by this common judgment, as all these appeals are arising out of the judgment dated 9-9-1996 passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial No.245/95 and also arising out of the same incident dated 28-4-1995, whereby a dacoity was committed in Bank of Baroda, Branch: Devi Ganj Road, Ambikapur.

2. The accused/appellants have preferred these criminal appeals questioning legality and correctness of the judgment of conviction and order of sentence dated 9-9-1996 passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial No.245/95, whereby learned Additional Sessions Judge convicted and sentenced them as under: -

Name of the accused	Offence under which convicted	Sentences imposed
Raj Kumar Singh, Gouri Shankar Singh, Arvind Singh, Devendra Singh and Raviranjan Singh	Section 450 of the I.P.C.	R.I. for 10 years each.
	Section 395 read with Section 397 of the I.P.C.	Life imprisonment to each of the accused.
	Section 120-B of the I.P.C.	Life imprisonment to each of the accused.
	Sections 25 & 27 of the Arms Act	R.I. for 3 years to each of the accused under each head.
Surendra Singh & Sanjay Singh	Section 120-B of the I.P.C.	Life imprisonment to each of the accused.
	Section 412 of the I.P.C.	Life imprisonment to each of the accused.
	Sections 25 & 27 of the Arms Act	R.I. for 3 years to each of the accused under each head.
Mohan Singh, Baliram Singh & Devmuni Bai	Section 120-B of the I.P.C.	Life imprisonment to each of the accused.
	Section 412 of the I.P.C.	Life imprisonment to each of the accused.
Surendra Tiwari	Section 120-B of the I.P.C.	Life imprisonment.
	Section 201 of the I.P.C.	R.I. for 3 years.

Learned Additional Sessions Judge further directed that all the sentences awarded to each accused shall run concurrently and also directed that the detention period of each accused shall be set of against the sentences imposed upon them.

3. The prosecution case, in brief, is that on 28-4-1995 at about 12.35 p.m. accused persons Raj Kumar Singh, Gouri Shankar Singh, Arvind Singh, Devendra Singh & Raviranjan Singh committed dacoity in Bank of Baroda situated on the first floor on Devi Ganj Road, Ambikapur, at the gun point and looted an amount to the tune of Rs.6,37,560/-. These accused persons entered the Bank armed with country made pistols/Deshi Katta and one of the associates switched off the main electric switch of the Bank, even then there

was natural light. Accused Arvind Singh reached near Vipin Kishore Lakra (PW-1), who was sitting at the cash counter, and at the pistol point asked him to get up from the seat and come in the hall. Thereafter, accused Arvind Singh also took another cashier Smt. Mamta Chakravarty (PW-2) in the hall at the pistol point. At that time, Branch Manager Suresh Kumar Agrawal (PW-10) was sitting in his chamber with one Vijay Jaiswal. Accused Raj Kumar Singh armed with country made pistol entered the chamber of Branch Manager and asked him to go in the hall. When Suresh Kumar Agrawal tried to make telephone call, accused Raj Kumar Singh caught hold of him from his collar and dragged him to the main hall from his chamber. Three dacoits were already standing there armed with country made pistols surrounding the persons. Suresh Kumar Agrawal saw that accused Raviranjan Singh was standing at the main gate of the Bank. When accused Gouri Shankar Singh enquired from Suresh Agrawal about the location of strong room then he informed him that strong room is in the ground floor. When Gouri Shankar Singh asked for key, Suresh Agrawal replied that he is not in possession of key on which Gouri Shankar assaulted with the butt of the pistol on the head of Suresh Agrawal as a result of which blood started oozing out of the injury. In the mean time, accused Devendra Singh & Arvind Singh went towards the cash counter, picked up the bundles of currency notes and filled them in a green colour bag. When the accused persons started going towards the strong room along with Suresh Kumar Agrawal, one of the accused threatened Suresh Kumar that he will be shot dead on which he became frightened, in the mean time, the accused who was standing at the main gate started shouting that two persons have gone out. Hearing this, the accused persons fled away from the place of occurrence with looted currency notes.

4. By coincidence, Head Constable Saeed Hussain (PW-5) was present at Gyanoday Stationery bookshop to purchase a diary. When he heard noise in the Bank, he stopped his scooter and saw that two persons were coming out of the Bank firing shots from their country made pistols and sat on a motorcycle, in the mean time, third person also came, he also sat on the motorcycle and fled away from the scene of occurrence on a motorcycle. Saeed Hussain chased them on scooter. At Sangam Chowk, he got a jeep of Supply Department of the Govt. of Madhya Pradesh, he stopped the jeep, sat in the

driver seat and started chasing the dacoits by the said jeep towards Mannendragarh Road. One Ganesh Singh (PW-7) was also in the jeep. When the accused persons reached near Punjab Garden, they fired a shot on the jeep with the country made pistol, which hit in between both the headlights of the jeep. The accused persons took turn on a Kacha road going towards Village: Mahavirpur. After some distance, the motorcycle slipped and all the three accused persons fell down and started running on foot towards the forest. In the mean time, the Gypsy jeep of the Superintendent of Police, Ambikapur also came and Saeed Hussain apprised him about the location of the accused persons. The accused persons, who were sitting on the motorcycle, were Raj Kumar Singh, Arvind Singh & Devendra Singh.

5. Hearing the screams of Bank employees and customers, somebody telephoned in Police Station: Ambikapur that dacoity has been committed in the Bank on which Assistant Sub Inspector Duryodhan Banjare (PW-23) reached to the Bank along with his staff and met Branch Manager Suresh Kumar Agrawal who gave the report (Ex.P-8) and based on that report, the F.I.R. (Ex.P-38) was registered. Suresh Agrawal was sent for medical examination to the hospital, where Dr. Ashok Kumar Bansal (PW-14) examined him and prepared the examination report (Ex.P-24). Additional Superintendent of Police Thakur along with Vipin Kishore Kujur (PW-25) started chasing the dacoits on a jeep and on wireless fitted in the jeep they received information that the dacoits have ran away towards Mahavirpur. On reaching Village: Mahavirpur, they came to know from the villagers that the dacoits have ran towards Pilkha hill. 3 kms. ahead from the village, a motorcycle was found lying there which was taken into policy custody under Ex.P-18 and they proceeded further. Some encounter took place between the Police party and the dacoits. Gouri Shankar Singh, one of the dacoits, was caught there and currency notes worth Rs.80,000/- along with one country made pistol 315 bore & 4 cartridges were recovered from him and taken into possession under Ex.P-20.

6. Head Constable Kanti Prasad (PW-16) caught dacoit Raviranjan Singh near Pilkha hill and recovered currency notes worth Rs.70,000/- with one country made pistol, 6 live cartridges and 2 empty cartridges, same were taken into possession under Ex.P-19.

7. Sub Inspector N.P. Upadhyay (PW-26) who was giving evidence in a case in the Court of Judicial Magistrate, First Class, Ambikapur, also left towards Manendragarh road on a jeep and he came to know through wireless that the Superintendent of Police is also proceeding towards Manendragarh road. He along with the S.P. proceeded towards Mahavirpur road and they found a motorcycle. They were informed by the villagers that the motorcycle in question has been left by the dacoits and they have ran towards the forest. Motorcycle, one military colour bag, another bag, one lock & one key were taken into possession under Ex.P-22. Thereafter, they proceeded further and caught accused Arvind Singh. On search, one country made pistol, 5 live cartridges, one empty cartridge and currency notes of Rs.50 & Rs.100/- denominations were taken into possession under Ex.P-6. At that time, the dacoits started firing and N.P. Upadhyay, S.P., Additional S.P., & Constable Jagjivan Ram received injuries. When N.P. Upadhyay was proceeding further, he found one injured person dacoit Devendra Singh and from him he recovered one country made pistol, 5 live cartridges, Rs.70,000/- & one pass book, same were taken into possession under Ex.P-23. On enquiry, dacoit Devendra Singh informed that Raj Kumar Singh has ran away. When the Police party came on the road, people informed them that one person had ran away towards Jainagar. Arvind Singh was called there. Accused Arvind Singh & Devendra Singh informed that owner of Poonam Lodge Surendra Singh and Devmuni Bai were also party to the dacoity. Heeramani Gautam (PW-20) and others reached to Poonam Lodge from where they went to the house of Surendra Singh and an amount of Rs.86,700/-, one country made pistol and 5 live cartridges were taken into possession from accused Surendra Singh under Ex.P-32. From accused Devmuni Bai an amount of Rs.78,619/- on which slip bearing impression of Bank of Baroda was recovered.

8. Bhoodhar Prasad Dwivedi (PW-18), Station House Officer, Police Station: Jainagar, when came to know about the dacoity on wireless at about 2.30 p.m. to 3 p.m. started patrolling & checking of vehicles. At about 8.35 p.m. when they stopped and checked the bus of Sharda Bus Service, accused Raj Kumar Singh was found sitting in the bus and from his possession, currency notes worth Rs.70,000/- which were looted from the Bank, one country made pistol

& 4 live cartridges were recovered and taken into possession under Ex.P-21. B.P. Dwivedi (PW-18) also came to know that some accused persons are also sitting in the house of accused Mohan Singh. On raid in accused Mohan Singh's house, accused Sanjay Singh, Baliram Singh & Mohan Singh were found. From accused Sanjay Singh, an amount of Rs.55,000/- with one country made pistol and four cartridges were taken into possession under Ex.P-30. From accused Baliram Singh, Rs.20,000/- was recovered under Ex.P-31 and from accused Mohan Singh also, Rs.20,000/- was recovered under Ex.P-29.

9. One pair of Chappal left by the accused dacoits in the Bank was taken into possession under Ex.P-36. One bag containing currency notes of Rs.50/- denomination, which was lying on the road in front of Saheli Stores, was taken into possession under Ex.P-37. One slipper of the dacoits was taken into possession under Ex.P-39 from the staircase of the Bank. Currency notes of Rs.5/- & Rs.10/- denominations were taken into possession from the Bank, which were lying on the floor.

10. N.P. Upadhyay (PW-26) also took into possession the blood stained clothes of Branch Manager Suresh Kumar Agrawal (PW-10) under Ex.P-3 and the sample blood, which was lying on the floor of the Bank, was also taken into possession under Ex.P-5. Addresses of arrested accused persons were got verified under Ex.P-7.

11. Injured Police party was examined by Dr. Ashok Kumar Jaiswal (PW-15) and he prepared the injury reports Exs.P-25, P-26, P-27 & P-28. Identification of the accused persons was got conducted by Additional Tehsildar Mrs. Shakuntala Sharma (PW-4) and memorandum Ex.P-1 was prepared in which accused persons Raviranjan Singh, Devendra Kumar Singh, Arvind Singh, Raj Kumar Singh & Gouri Shankar Singh were correctly identified by Suresh Kumar Agrawal (PW-10), Raghunath Sharan Bajpai (PW-6), Vipin Kishore Lakra (PW-1), Smt. Mamta Chakravarthy (PW-2) & Satyanarayanan. Recovered articles were sent to the Forensic Science Laboratory, Sagar, under Ex.P-57. Handwriting & signatures were sent to the Handwriting Expert, Bhopal under Ex.P-58. The accused persons were not having licence to possess the arms, therefore, a sanction to prosecute them was obtained from the District

Magistrate (Collector) under Ex.P-59. Reports of the F.S.L. Exs.P.60 & P-61 were received.

12. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned 1st Additional Sessions Judge, Ambikapur, received the case on transfer for trial.

13. The prosecution examined in all 27 witnesses. On the other hand, statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence and examined Pancham Pandey (DW-1), Triveni Singh (DW-2), Uttam Sinha (DW-3), Pradeep Nautiyal (DW-4), Manoj Singh (DW-5), Shivji Mishra (DW-6), Umashankar Ojha (DW-7) & Sudhir Pandey (DW-8) in their defence.

14. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused persons convicted and sentenced each of the accused as mentioned in para 2 of this judgment.

15. We have heard Mr. Surendra Singh, learned Senior Advocate with Mr. Neeraj Mehta on behalf of accused/appellants Baliram Singh, Sanjay Kumar Singh, Raj Kumar @ Shivji Singh, Gouri Shankar Singh, Devendra Kumar Singh & Arvind Singh; Mr. M.D. Dhote, learned counsel for accused/appellant Mohan Singh; Mr. Vishnu Koshta, learned counsel for accused/appellant Raviranjan Singh; Mrs. Savita Tiwari, learned counsel for accused/appellants Surendra Singh & Devmuni Bai; Mr. V.K. Pandey, learned counsel for accused/appellant Surendra Tiwari; Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Ravindra Agrawal, learned Panel Lawyer on behalf of the State/ respondent; and Mr. Yashwant Tiwari, learned Advocate with Mr. Amiyakant Tiwari for Bank of Baroda, Ambikapur.

16. In this case, the main accused who committed the dacoity in Bank of Baroda on 28-4-1995 were the accused/appellants namely, Raj Kumar @ Shivji Singh (A-1), Gouri Shankar Singh (A-2), Devendra Kumar Singh (A-3), Arvind Singh (A-7) & Raviranjan Kumar Singh (A-9). They have been convicted for commission of offence punishable under Sections 120-B, 450 & 395 read with Section 397 of the I.P.C. and Sections 25 & 27 of the Arms Act. Learned

Senior Advocate Mr. Surendra Singh appearing on behalf of accused/ appellants Raj Kumar @ Shivji Singh (A-1), Gouri Shankar Singh (A-2), Devendra Kumar Singh (A-3) & Arvind Singh (A-7) and Mr. Vishnu Koshta, learned counsel appearing on behalf of accused/appellant Raviranjan Kumar Singh submitted that from the evidence available on record, offences against these persons have been established and most of the accused are in custody since around about 11 years, therefore, their sentences be reduced to already undergone, as looking to the nature of the offence they have already served more than the sentences normally imposed in such a crime.

17. In order to establish charge against the accused/appellants, the prosecution has adduced the evidence of Vipin Kishore Lakra (PW-1) & Smt. Mamta Chakravarthy (PW-2) who were working as Clerk-cum-Cashier & Head Cashier, respectively, in the Bank on the relevant day. Raghunath Sharan Bajpai (PW-6) was working in the Bank as Joint Manager and Suresh Kumar Agrawal (PW-10) was working as Branch Manager. Vipin Kishore Lakra (PW-1) & Smt. Mamta Chakravarthy (PW-2) have categorically stated in their evidence that on 28-4-1995 they were working as Cashier & Head Cashier in Bank of Baroda. In between 12.30 p.m. and 12.45 p.m. when they were busy in their work one person carrying country made pistol in his hand came, light of the Bank was switched off from the main switch, one person armed with a pistol in his hand came on the window of cash counter of Vipin Kishore Lakra and after pointing the pistol towards him asked him to come out from the seat, he also threatened him to come out immediately, otherwise he will kill him and he took him to the center of the Bank. He also took the customers in the center of the Bank and threatened them not to move, thereafter he went towards the table of the payment counter. Another person also went towards the payment counter and they started filling currency notes in a green colour bag. One person entered the cabin of Branch Manager Suresh Agrawal and after catching hold of him by his collar took him out of the chamber and started demanding the keys of strong room. When the Manager denied about the keys then that person assaulted the Manager with the butt of the country made pistol as a result of which blood started oozing out of the injury of the head. One dacoit was standing at the gate and he told that two persons have gone out, therefore, they should go early and thereafter, the dacoits fled

away. This witness (PW-1) has further stated that on 29-4-1995, the lady Additional Tehsildar conducted identification parade and after completion of the identification parade, identification memo Ex.P-1 was prepared which bears his signature. After pointing towards accused Arvind Singh, PW-1 stated that he came to his counter and after indicating towards Devendra Singh he stated that he was the other person who came to the counter after crossing the table. The dacoit who was collecting persons at the center hall, at the pistol point was Raj Kumar Singh. After pointing towards Gouri Shankar Singh, he stated that he was the dacoit who attacked Suresh Agrawal, the Branch Manager. After pointing towards dacoit Raviranjan Kumar Singh, this witness indicated that he was standing at the gate of the Bank.

18. The above evidence has been corroborated by Smt. Mamta Chakravarthy (PW-2), Raghunath Sharan Bajpai (PW-6) and Suresh Kumar Agrawal (PW-10). All these witnesses have also proved the identification memo Ex.P-1, which was prepared by the Additional Tehsildar after conducting the identification parade on 29-4-1995 in the Electricity Board's Office.

19. Smt. Shakuntala Sharma (PW-4), the then Additional Tehsildar, Ambikapur, has stated in her evidence that the identification parade was conducted on 29-4-1995 in the Office of Madhya Pradesh Electricity Board in the evening at about 4 p.m. and the accused persons were correctly identified by S.K. Agrawal, R.S. Bajpai, Vipin Kishore, Smt. Mamta Chakravarthy & Satyanarayan.

20. Apart from the above evidence of the eyewitnesses, complicity of the accused persons in the crime in question is also established from the fact that after committing the robbery the accused persons fled the scene of occurrence, they were chased by Saeed Hussain (PW-5), Head Constable who as a matter of coincidence came to the stationary shop namely Gyanoday Stationery which was near the Bank to purchase a diary and he saw that three accused persons namely, Arvind Singh, Raj Kumar @ Shivji Singh & Devendra Singh, ran away on the motorcycle. He chased them on a jeep of the Supply Department of the Govt. of Madhya Pradesh. Ganesh Singh had also accompanied Saeed Hussain in the jeep. When the jeep reached near Punjab Garden on Manendragarh Road, the accused dacoits fired shot on the jeep, which hit in

front of the jeep between the two head lights and thereafter, they turned towards the Kacha road of Mahavirpur. After some distance, the motorcycle slipped and they started running by foot towards the forest. In the mean time, Superintendent of Police Ashok Chaudhari also came on a gypsy and he also chased the dacoits. As per the evidence of Radhey Krishna Gupta (PW-11), the motorcycle bearing No.MP-27/5052 was taken into possession in his presence under Ex.P-18. After some time, near Pilkha hill, dacoit Raviranjan Kumar Singh, who was standing at the gate of the Bank while committing the dacoity, was caught and a country made pistol of two barrel, 6 live cartridges & currency notes bearing the seal of Bank of Baroda was taken into possession from his custody under Ex.P-19 and an amount of Rs.68,000/- was recovered from him.

21. Kanti Prasad (PW-16), Head Constable, has also stated in his evidence that on 28-4-1995 at about 3.40 p.m. near Pilkha hill he caught accused Raviranjan Singh in the presence of Radhey Krishna Gupta & Mukurdhari Singh and a country made pistol of 2 barrel 315 bore, 6 live cartridges, 2 empty cartridges and currency notes were recovered under Ex.P-19.

22. From accused Gouri Shankar Singh, currency notes worth Rs.80,000/- and one country made pistol of 315 bore along with 4 live cartridges were recovered near Pilkha hill. Vipin Kishore Kujur (PW-25), Sub Inspector, has stated in his evidence that motorcycle was taken into possession under Ex.P-18 and thereafter at about 5.40 p.m. dacoit Gouri Shankar Singh was caught and from him one country made pistol of 315 bore along with 4 live cartridges and an amount of Rs.80,000/- was recovered under Ex.P-20. Radhey Krishna Gupta (PW-11) has stated that from accused Gouri Shankar Singh one country made pistol of 315 bore along with 4 live cartridges and Rs.80,000/- were recovered under Ex.P-20.

23. Ambika Singh (PW-12) has stated in his evidence that on 28-4-1995 near Police Station: Jainagar checking was conducted by Inspector B.P. Dwivedi and during checking in one mini-bus of Sharda Travels, accused Raj Kumar Singh was caught and from his possession one country made pistol of 315 bore, 4 live cartridges & one bag containing currency notes worth Rs.70,000/- were recovered. B.P. Dwivedi (PW-18) has stated in his evidence that on 28-4-1995

at about 8.35 p.m. after stopping the bus near Jainagar Police Station a search was conducted in which accused Raj Kumar Singh was caught and currency notes worth Rs.70,000/- on which the slip of Bank of Baroda was there, were taken into possession and from his bag one country made pistol of 315 bore and live cartridges were recovered under Ex.P-21.

24. Vipin Gupta (PW-13) has stated in his evidence that on 28-4-1995 near Poha mill, one green bag, one brown bag, one lock & key were taken into possession under Ex.P-22. In the forest, dacoit Devendra Singh was caught and an amount of Rs.70,000/-, one country made pistol, 5 live cartridges & 4 empty cartridges were recovered from him under Ex.P-23. N.P. Upadhyay (PW-26), Sub Inspector of Police, has corroborated the above evidence of Vipin Gupta (PW-13) and stated that Devendra Singh was caught in injured condition and recoveries were effected from him. N.P. Upadhyay (PW-26) has also stated in his evidence that 2 kms. away from the Main Road of Manendragarh one motorcycle was lying, that was taken into possession and thereafter, Ganesh Singh informed him that the dacoits have ran away towards the forest. At that time, the Superintendent of Police was also there and they chased the dacoits. The motorcycle, bags, lock & key were taken into possession under Ex.P-22. Dacoit Arvind Singh was also caught and from him one country made pistol, 5 live cartridges, 1 empty cartridge and an amount of Rs.75,000/- were recovered under Ex.P-6. The accused persons fired shots on them also and one more injured person was found and on enquiry he disclosed that he is Devendra Singh.

25. Ganesh Singh (PW-7) has stated in his evidence that on 28-4-1995, he came to deposit amount in Central Cooperative Bank, Ambikapur, and he saw that one person was running from Devi Ganj Road to Sangam Chowk, he caught him, but he ran away. Thereafter, they chased and he was caught by Sub Inspector Upadhyay & the Superintendent of Police and one country made pistol, 1 empty cartridge, 5 live cartridges & an amount of Rs.75,000/- were recovered from him.

26. Therefore, from the above evidence, the dacoits were identified by Vipin Kishore Lakra (PW-1), Smt. Mamta Chakravarthy (PW-2), Raghunath Sharan Bajpai (PW-6) & Suresh Kumar Agrawal (PW-10), who have stated that they

committed the dacoity. Thereafter, looted currency notes as well as country made pistols and live cartridges were recovered from these persons within no time. Therefore, under Illustration (a) to Section 114 of the Indian Evidence Act, 1872, a presumption inference can be drawn that the currency notes, which were looted from the Bank, were recovered within no time from their possession. Hence, the Court can presume that these persons were the dacoits who committed the dacoity in the Bank in question and these accused persons were carrying deadly arms while committing the dacoity and while committing the dacoity they used the deadly weapons and caused hurt to the Branch Manager as well as the Superintendent of Police and his party by firing shots and thereby, offence under Section 395 read with Section 397 of the I.P.C. stands established against these five accused persons. They entered the Bank to commit the dacoity and thereby they committed the house trespass. Therefore, offence under Section 450 of the I.P.C. is also established against them. All these persons were carrying unlicensed firearms and they used those firearms also. In the circumstances, they have been rightly convicted under Sections 25 & 27 of the Arms Act.

27. As far as the offence punishable under Section 120-B of the I.P.C. is concerned, Section 120-A of the I.P.C. defines criminal conspiracy which envisages that

> "When two or more persons agree to do, or cause to be done,
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

28. The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute

required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

29. For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

30. Direct evidence of the conspiracy is seldom available. The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

31. As has been held by the Apex Court in the matter of **Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra** reported in **AIR 1965 SC 682**, "there

is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence".

32. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

33. As has been held by the Apex Court in the matter of **Suresh Chandra Bahri** v. **State of Bihar** reported in **1995 Supp (1) SCC 80**,

> "In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in Section 120-B."

34. In the matter of **E.K. Chandrasenan** v. **State of Kerala** reported in **(1995) 2 SCC 99**, the Apex Court held that

> "Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence."

35. Again in the matter of **Kehar Singh** v. **State (Delhi Admn.)** reported in **(1988) 3 SCC 609**, the Apex Court held that

> "275. Generally a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient."

36. As has been held in the matter of **State of Bihar** v. **Pramhans Yadav** reported in **1986 Pat LJR 688 (HC)**, conspiracy can be proved by circumstances and other materials.

37. In the matter of **State of Maharashtra** v. **Som Nath Thapa** reported in **(1996) 4 SCC 659**, the Apex Court has held that

> "To establish a charge of conspiracy *knowledge* about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

38. In the matter of **Ajay Aggarwal** v. **Union of India** reported in **(1993) 3 SCC 609**, the Apex Court held that

> "8. ... It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having

three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by lord Denman in Jones case {R. v. Jones, (1832) 4 B & Ad 345} that an indictment for conspiracy must 'charge a conspiracy to do an unlawful act by unlawful means' and was elaborated by Willies, J. on behalf of the Judges while referring the question to the House of Lords in Mulcahy v. R. {(1868) LR 3 HL 306} and House of Lords in unanimous decision reiterated in Quinn v. Leathem (1901 AC 495):

> 'A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful; and punishable if for a criminal object, or for the use of criminal means.'"

39. In the matter of **Yash Pal Mittal vs. State of Punjab** reported in **(1977) 4 SCC 540**, the Apex Court has held that

> "... The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators."

40. For resting conviction of the accused based on circumstantial evidence, the principal laid down by the Apex Court in the matter of **Dhananjoy Chatterjee** v. **State of W.B.** reported in **(1994) 2 SCC 220** has to be applied:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

41. In this connection, Section 10 of the Indian Evidence Act, 1872, is also relevant which enumerates that

> "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

For attracting the provisions of Section 10 of the Evidence Act, it is necessary that a prima facie case of conspiracy has to be established. Section 10 comes into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a prima facie evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such prima facie evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it.

42. In the light of above principles laid down by the Apex Court, if we look into the evidence available on record, in this matter all the accused persons belong to the State of Bihar and all of them came together to Ambikapur and stayed

in Maya Lodge which is established by the evidence of Harishankar Mishra (PW-21), Manager of the said lodge. Poonam Kesari (PW-9) of Maya Lodge has stated in her evidence that the accused persons stayed in the lodge from 25-4-1995, thereafter they committed the dacoity in the Bank on 28-4-1995 at about 12.30 p.m. and they ran way with the currency notes after committing the dacoity, then they were caught on the same day with currency notes in the nearby vicinity. By the recovery of currency notes, a presumption under Illustration (a) to Section 114 of the Indian Evidence Act, 1872, can be raised that the said amount was of dacoity committed in Bank of Baroda. As per the provisions of Section 10 of the Indian Evidence Act, the act done by each of the accused is relevant for the purpose of proving the existence of the conspiracy between the above five accused/appellants. Therefore, from the above evidence, it is established that all the five accused persons entered into an agreement to commit the dacoity in Bank of Baroda and in pursuance to that agreement, the accused persons committed the dacoity, which is an illegal act. In the circumstances, offence punishable under Section 120-B of the I.P.C. is also established against these five appellants and the offence under Section 120-A of the I.P.C. punishable under Section 120-B of the I.P.C. is an independent offence apart from the other offences and as such, the accused persons can be punished under Section 120-B of the I.P.C. Therefore, we are of the considered opinion that there is no illegality and infirmity in the judgment of the trial Court convicting and sentencing the appellants namely, Raj Kumar @ Shivji Singh (A-1), Gouri Shankar Singh (A-2), Devendra Kumar Singh (A-3), Arvind Singh (A-7) & Raviranjan Kumar Singh (A-9) under Sections 450, 395 read with Section 397 & 120-B of the I.P.C. and Sections 25 & 27 of the Arms Act.

Accused/Appellants Mohan Singh, Baliram Singh & Sanjay Singh

43. These accused persons have been convicted for commission of offence under Sections 412 & 120-B of the I.P.C. and in addition, accused Sanjay Singh has been convicted for commission of offence under Sections 25 & 27 of the Arms Act.

44. As per the evidence of Janki Prasad (PW-17), accused/appellants Mohan Singh, Baliram Singh & Sanjay Singh were caught on 28-4-1995 at about 9 p.m.

to 10 p.m. when they were consuming liquor in the husk room adjacent to the house of Mohan Singh in the town of Vishrampur. An amount of Rs.20,000/- was recovered from Mohan Singh under Ex.P-29. An amount of Rs.55,000/-, one country made pistol, cartridge & Hero Majestic were taken into possession from Sanjay Singh under Ex.P-30. From accused Baliram Singh Rs.20,000/- was recovered under Ex.P-31. On the currency notes there was slip of Bank of Baroda.

45. B.P. Diwvedi (PW-18), S.H.O., Police Station: Jainagar, has stated in his evidence that he received information regarding the bank dacoity on 28-4-1995 through a wireless message and during seizure from Raj Kumar Singh he received information that some dacoits have ran away towards Vishrampur and they are hiding themselves in the house of Mohan Singh. On this information, he reached to the house of Mohan Singh in the town of Vishrampur and found that Mohan Singh, Baliram Singh & Sanjay Singh were consuming liquor in the husk room adjacent to the house of Mohan Singh and currency notes, country made pistol, cartridge & Hero Majestic were taken into possession at about 9 p.m. to 9.20 p.m. and recovery memos Exs.P-29, P-30 & P-31 were prepared.

46. Mr. Surendra Singh, learned Senior Advocate for the accused/appellants, argued that in the first instance, no independent witness from the vicinity was taken to the search place at the time of search and witness Janki Prasad (PW-17) was not the witness of the locality from where the recovery is said to have been effected, he was the person who was a Police pocket witness, who has admitted that he had already appeared as prosecution witness in 5-6 cases. He also argued that before effecting the search neither the Sub Inspector gave his search to the witnesses nor he took the search of the witnesses. Moreover, accused Baliram Singh is a Mining Sardar working in South Eastern Coalfields Limited at Pokhriya Colliery, he was on duty till 4 p.m. and was arrested at the gate at 4.15 p.m. on 28-4-1995. This has been proved by Senior Over-man Pancham Pandey (DW-1), Short Firer Triveni Singh (DW-2), Magazine In-charge Shivji Mishra (DW-6) & Umashankar Ojha (DW-7). Even Janki Prasad (PW-17) has not identified Baliram Singh and he was not able to give details of the seizure. Therefore, recovery has not been established, as such, offence under Sections 412 & 120-B of the I.P.C. and Sections 25 & 27

of the Arms Act has not been proved against these appellants beyond reasonable doubt.

47. On the other hand, Mr. U.N.S. Deo, learned Additional Public Prosecutor supported the judgment of the trial Court.

48. Having heard learned counsel for the parties, we have perused the evidence of Janki Prasad (PW-17) & B.P. Dwivedi (PW-18). Other independent witness of recovery namely, Bhojraj has not been examined by the prosecution. Having perused the evidence of Investigating Officer B.P. Dwivedi (PW-18) and witness of the seizure Janki Prasad (PW-17), we are of the opinion that the argument advanced by learned Senior Counsel for the appellants is worth merit for the reason that Janki Prasad in cross-examination has admitted that he is residing near Police Station: Jainagar which is situated at about 2 kms. away from the house where the search was effected and in between the 2 kms. distance, there are hundreds of houses of SECL employees and those houses are inhabited by people. Moreover, this witness has admitted in para 21 of his cross-examination that he had already given evidence on behalf of the Police in 5-7 cases. Therefore, the evidence of this witness does not inspire confidence of the Court because he is not the witness of immediate proximity of the house where the search was effected and for this we are fortified in our view by the judgment of the Apex Court in the matter of **State of U.P. v. Arun Kumar Gupta** reported in **AIR 2003 SC 801**, as per the observations of the Apex Court in para 17 of the said judgment.

49. Even in para 13 of his evidence Janki Prasad (PW-17) has stated that he saw the articles near the house of Mohan Singh, at that time, the articles were kept and where those articles were taken by Inspector Dwivedi he does not know. From the above evidence it is apparent that the recovery was not effected in the presence of this witness from the accused persons and the articles were already kept by Dwivedi. Therefore, it is not proved that the recovery was effected from the person of accused Baliram Singh, Mohan Singh & Sanjay Singh. Even in para 11 of his evidence, Janki Prasad (PW-17) has stated that he cannot describe the size of husk room and he does not know about the kind of roof of that room whether it was thatched, tin sheet or cemented sheet or RCC roof and he is not able to disclose about the

description of doors & windows. In para 14 he has stated that he went to lodge a report in Police Station: Jainagar regarding some dispute and from there Station House Officer B.P. Dwivedi took him to the place of search. But no report was lodged by him and at the later stage he has stated that he went to the Police Station along with some persons regarding some dispute among the villagers. Moreover, it is admitted by Investigating Officer B.P. Dwivedi (PW-18) that before effecting the search of the accused persons he did not give his search to the witnesses nor he took the search of the witnesses. Therefore, on this count also the search cannot be said to be fair. Janki Prasad (PW-17) has further stated that for the first time he saw Mohan Singh there and he was not able to identify accused Baliram Singh in the Court.

50. Moreover, accused Baliram Singh was working in the SECL Pokhriya colliery as Mining Sardar and he was on duty till 4 p.m. on 28-4-1995. Pancham Pandey (DW-1), who was working as Senior Over-man, has stated in his evidence that on 28-4-1995 he was on duty from 8 a.m. to 4 p.m., accused Baliram was working under him, on that day his duty was over at 4 p.m., thereafter they sat in the SECL vehicle No.407 for going to their residence. The colliery where Baliram was on duty is said to be 5-6 kms. away from Vishrampur and he was also in that vehicle. Triveni Singh, Short Firer was also in the vehicle. At that time, Police came and arrested Baliram. Triveni Singh (DW-2), Short Firer, has corroborated the above evidence and stated that Baliram was on duty from 8 a.m. to 4 p.m. on 28-4-1995. Uttam Sinha (DW-3), who was working as LIC agent in Vishrampur, has stated in his evidence that in the year 1995, at about 2 p.m. to 2.30 p.m. he was tying his cow, at that time one jeep & one motorcycle came in front of the house of Sanjay Singh, Police people were present in the vehicles and they arrested Sanjay Singh. Pradeep Nautiyal (DW-4) has proved the duty certificate (Ex.D-10) of Baliram Singh. Shivji Mishra (DW-6), who was working as Magazine In-charge, has stated in his evidence that on 28-4-1995 he issued 3-ton gunpowder for the purpose of blasting of mine and on that day he also issued the fuse and he effected the entries in the register Exs.D-11 & D-9. There is no reason to disbelieve the evidence of these employees of the SECL.

51. The evidence of defence witnesses has to be entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. For this view we are fortified by the judgment of the Apex Court in the matter of **State of Haryana** v. **Ram Singh** reported in **AIR 2002 SC 620**.

52. As has been discussed above, the evidence of Janki Prasad (PW-17) is not convincing and does not inspire confidence for the reasons mentioned in the aforementioned paragraphs. B.P. Dwivedi (PW-18) has stated that he received a wireless message that some dacoits are hiding themselves in the house of Mohan Singh at Vishrampur. But that wireless message has not been produced before the Court. Therefore, he has not been able to establish the source of information, which creates doubt about the genuineness of the search. Moreover, it is admitted position that 5 dacoits committed dacoity in the Bank and all of them were caught in the nearby vicinity of Ambikapur and nobody could reach up to Vishrampur. It is not a case that accused Baliram Singh, Mohan Singh & Sanjay Singh were in Ambikapur and there was no occasion for the accused persons (original dacoits) to handover the looted money to these persons, because, as per the prosecution evidence, the dacoits immediately ran away on a motorcycle after coming out from the Bank, they were immediately chased by the Police party, four of them were arrested near the Pilkha hill and accused Raj Kumar Singh was arrested by B.P. Dwivedi (PW-18) in a bus when he was going from Ambikapur to Manendragarh. Therefore, the prosecution case on this aspect also becomes doubtful. There is no other evidence to connect the accused persons with the dacoity. In the circumstances, recovery of currency notes and pistol becomes doubtful and same does not inspire confidence of the Court. Therefore, their conviction under Section 412 of the I.P.C. and in addition to that, the conviction of Sanjay Singh under Sections 25 & 27 of the Arms Act is not based on any legal and clinching evidence.

53. As far as the conviction of accused/appellants Baliram Singh, Mohan Singh & Sanjay Singh under Section 120-B of the I.P.C. for entering into an agreement to commit the dacoity is concerned, as has been mentioned earlier conspiracy

can be proved even by the circumstantial evidence. As per **Dhananjoy Chatterjee's** case, in order to connect the accused based on circumstantial evidence there must be clear, cogent and clinching legal evidence, which should indicate towards the involvement of the accused in the crime in question, and there should not be any possibility of innocence of the accused. Based on this principle, the prosecution has not been able to connect these accused persons by producing any circumstantial evidence to prove the charge of Section 120-B of the I.P.C.

54. Therefore, the conviction of accused/appellants Baliram Singh, Mohan Singh & Sanjay Singh under Sections 412 & 120-B of the I.P.C. cannot be sustained and also the conviction of accused Sanjay Singh under Sections 25 & 27 of the Arms Act cannot be sustained.

Accused/appellants Surendra Singh & Devmuni Bai

55. Accused/appellants Surendra Singh & Devmuni Bai have been convicted for commission of offence under Sections 120-B & 412 of the I.P.C. and in addition, accused Surendra Singh has been convicted for commission of offence under Sections 25 & 27 of the Arms Act.

56. To establish the above charges, the prosecution has examined Bablu Singh (PW-19) & Heeramani Gautam (PW-20). As per the evidence of Bablu Singh (PW-19), at about 10 p.m. he was going towards Kedarpur, then he saw the crowd and heard that the Police have caught the Bank dacoits, therefore he went towards the house of Surendra Singh where Police Officer Gautam of Ambikapur Police Station was present. In his presence and in the presence of one Tiwari, currency notes, one country made pistol and 5 cartridges were taken into possession under Ex.P-32. From the house of accused Demuni Bai, currency notes were taken into possession under Ex.P-33. Witness Tiwari has not been examined by the prosecution. If we see the evidence of Bablu Singh, same does not inspire confidence of the Court for the reason that in cross-examination this witness has stated that when he reached there, Police Officer Gautam was standing with the articles and persons were standing at a distance of 2-4-5 paces. Gautam called witness Tiwari and the seizure proceedings started. He did not saw Tiwari coming out from the house and he

also did not saw Police Officer Gautam going and coming out of the house of accused Surendra Singh. When he reached there, Police Officer Gautam was already standing in the corridor holding the articles in his hand. Therefore, in view of this evidence it cannot be held that currency notes, pistol & cartridges were recovered at the instance of the accused persons from their house. In para 18, Bablu Singh (PW-19) has clearly stated that the articles were in the hands of Inspector Gautam and he was standing in the corridor. This witness has further stated that it is correct that the house of Demuni Bai & Surendra Singh is one and he does not know whether the house is having one gate or there are other gates also. He saw Demuni Bai & Surendra Singh for the first time and he does not know to whom that house belongs to and how many rooms are there. Particulars of the house are not mentioned in the seizure memos Exs.P-32 & P-33. He does not know how many persons are residing in the house. During writing of Exs.P-32 & P-33 Police Officer Gautam was busy and he did not talk to anybody in his presence.

57. Therefore, in view of the above shaky evidence of Bablu Singh (PW-19), it cannot be held that the recovery of currency notes of Rs.86,700/-, pistol & cartridges from Surendra Singh and Rs.78,619/- from Devmuni Bai, wife of Surendra Singh, is established. Hiramani Gautam (PW-20) has stated in his evidence that he had not mentioned the particulars of the house, description of the adjacent houses/shops and description of the road & the house in Exs. P-32 & P-33. He has admitted in para 32 of his cross-examination that before effecting the recovery he had not given his search nor search of Panchas was taken by him. As per the decision of the Apex Court in the matter of **The State of Bihar** v. **Kapil Singh** reported in **AIR 1969 SC 53**, "One of the formalities that has to be observed is that the searching officer should give his personal search to the witnesses before entering the premises to be searched and should similarly search the witnesses also in the presence of one another. That formality was not observed and therefore, without observing the formalities required to be observed while searching the house of Deo Singh, the recovery of cardboard box with the eartops sounds highly improbable."

58. Similar principle applies in this case also. In para 37, Hiramani Gautam (PW-20) has stated that at the time of seizure of currency notes no signatures of the independent witnesses or his signature were put on the notes which were recovered from the possession of Surendra Singh & Devmuni Bai. Therefore, the alleged recovery of currency notes, pistol & cartridges from Surendra Singh & Devmuni Bai is highly improbable and same does not inspire confidence of the Court. Moreover, as per the prosecution case, five accused persons committed the dacoity and when they left the Bank, they were chased by the Police immediately, they were caught near Pilkha hill and one was caught in the bus. Hence, there was no occasion for any dacoit to go and handover the looted money to any one. Therefore, this fact also creates doubt about the recovery of looted money from the house of Surendra Singh that how the looted money reached the house of Surendra Singh, when there was no occasion for the accused dacoits to go to his house and for this accused to come in contact with the dacoits as the dacoits were chased immediately and caught within no time. In view of the above, there is no legal clinching evidence, which inspires the confidence of the Court for believing the recovery of currency notes & pistol from the house of Surendra Singh & Devmuni Bai.

59. In the circumstances, the conviction of accused/appellants Surendra Singh & Devmuni Bai under Sections 412 & 120-B of the I.P.C. as also the conviction of Surendra Singh under Sections 25 & 27 of the Arms Act cannot be sustained and the same is liable to be quashed.

Accused/appellant Surendra Tiwari

60. Accused/appellant Surendra Tiwari has been convicted for commission of offence under Sections 120-B & 201 of the I.P.C. In order to prove this offence, Harishankar Mishra (PW-21) has been examined who has stated in his evidence that on the fateful day he was working as Manager in Maya Lodge and Kum. Poonam Kesari was working as Assistant Manager of that Lodge. On 25-4-1995, entry No.681 of Register R-1 is of his handwriting. The Police took into possession Registers R-1 & R-3 under Ex.P-34 from him. As per entry No.681, Raj Kumar Singh, the person who stayed in the hotel, made entries in his handwriting.

61. Poonam Kesari (PW-9) has stated in her evidence that on 28-4-1995 she was on duty in Maya Lodge and on 25-4-1995 at about 8.45 p.m. in Register R-1 at serial No.681 accused Raj Kumar Singh made entries in the presence of Harishankar Mishra. On 28-4-1995 entry was effected regarding leaving of the lodge and they vacated the lodge at about 11.45 a.m. after making payment of Rs.300/-. In Room No.152, two more persons were staying alongwith Raj Kumar Singh.

62. N.P. Upadhyay (PW-26) has stated in his evidence that on 29-4-1995 he seized the register of Poonam Lodge from accused Surendra Tiwari under Ex.P-35 and the register is R-2. One cash memo book was also taken into possession. The registers of both the lodges were seized because, they came to know that some accused persons stayed in Maya Lodge and some stayed in Poonam Lodge and entries in both the registers were effected by Raj Kumar Singh. No recovery of any looted items has been effected from Surendra Tiwari and there is no material on record which shows the agreement of accused Surendra Tiwari with the dacoits for committing the dacoity. Merely making entry in the register by Raj Kumar Singh and staying of the accused in Poonam Lodge of Surendra Tiwari without any further evidence or material to show the complicity of the accused in the dacoity, it cannot be inferred or presumed that accused Surendra Tiwari was in any way associated with the dacoity and he was party to the conspiracy or that he entered into agreement with the other accused persons for committing the dacoity, because lodge was meant for staying of any person and it is not a case that Poonam Lodge was not meant for customers to stay and only the dacoits were allowed to stay. In the lodge regularly passengers come and stay. Merely on the basis of staying of dacoits in his hotel, no inference can be drawn without any sufficient material to indicate that the accused was in agreement with the dacoits and party to the conspiracy or that any article of dacoity was recovered from his lodge.

63. Therefore, there is no legal and clinching evidence in order to connect the accused with the conspiracy to commit the dacoity or receiving any item of dacoity. There is no legal and clinching evidence to show that the accused in any way caused disappearance to the evidence in order to screen the dacoits from the punishment of any offence. In the circumstances, conviction of

accused/appellant Surendra Tiwari under Sections 120-B & 201 of the I.P.C. cannot be sustained and the same is liable to be quashed.

64. At the outset, Mr. Surendra Singh, learned Senior Advocate appearing on behalf of accused/appellants Raj Kumar @ Shivji Singh, Gouri Shankar Singh, Arvind Singh & Devendra Singh and Mr. Vishnu Koshta, learned counsel appearing on behalf of accused/appellant Raviranjan Singh argued that these accused/appellants are in detention since 28-4-1995 and thereby they have already undergone more than ten years & ten months of jail sentence and the punishment is sufficient, therefore, they may be released on the sentences already undergone by them. But, we are of the considered opinion that the accused/appellants came all the way from Bihar and committed daylight dacoity in the Bank. Dacoity in banks not only effects the economy of the country, but also the public money which was looted in such dacoity was to be used by the criminals for criminal activities. It is common knowledge that in recent times Bank dacoities are increasing, therefore, it is imperative that such criminals are punished in a befitting manner, so that the confidence of public remains in the banking system, as the public deposits money in the bank considering it most safe place and if such faith is shaken then the banking system and economy of the country gets effected. Moreover, during the course of arguments, it was informed that accused Arvind Singh absconded from custody on 9-1-1999 while he was being taken to attend Court proceedings in some criminal case. Similarly, accused Raj Kumar @ Shivji Singh also absconded on 22-1-1998 while being taken to attend some other Court. It shows that the accused persons were involved in regular criminal activities. Therefore, they do not deserve any leniency. In the circumstances, we are of the considered opinion that the interest of justice requires that the sentence imposed by the trial Court on these accused/ appellants should be maintained.

65. In the result,

1) The appeals of accused/appellants Surendra Singh & Sanjay Singh succeed and same are allowed. Their conviction and sentence under Sections 120-B & 412 of I.P.C. and Sections 25 & 27 of the Arms Act are set aside and

they are acquitted of the above charges. The appellants are on bail. Their bail stands discharged.

2) Similarly, the appeals of accused/appellants Mohan Singh, Baliram Singh & Devmuni Bai are also allowed. Their conviction and sentence under Sections 120-B & 412 of the I.P.C. are set aside and they are acquitted of the above charges. The appellants are on bail. Their bail stands discharged.

3) The appeal of accused/appellant Surendra Tiwari is also allowed. His conviction and sentence under Sections 120-B & 201 of the I.P.C. are set aside and he is acquitted of those charges. The appellant is on bail. His bail stands discharged.

4) However, the appeals of accused/appellants Raj Kumar @ Shivji Singh, Gouri Shankar Singh, Arvind Singh, Devendra Singh & Raviranjan Singh are dismissed. Their conviction and sentences under Sections 450, 395 read with Section 397 & 120-B of the I.P.C. and Sections 25 & 27 of the Arms Act are maintained. The trial Court is directed to issue standing warrant of arrest to Raj Kumar @ Shivji Singh & Arvind Singh and send it to the Superintendent of Police, Ambikapur, for effecting the arrest of Raj Kumar @ Shivji Singh & Arvind Singh in order to serve out the remaining sentences.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Soma